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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

In the Matter of the Liquidation

of

NATIONAL SURETY COMPANY

Claim of WILLIAM F. LAUGHLIN, as Administrator *de bonis non* of the Estate of Wesley Cooper, Deceased.

Claim No. C. B. 2262.

WILLIAM F. LAUGHLIN, etc.,
Petitioner,
(Claimant-Appellant below),

—against—

LOUIS H. PINK, Superintendent of Insurance of the State of New York, as Liquidator of National Surety Company,
Respondent,
(Petitioner-Respondent below).

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK AND BRIEF IN SUPPORT THEREOF.

OSCAR R. HOUSTON,
FRANCIS X. NESTOR,
Of Counsel.

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Respondent,
(Petitioner-Respondent below).

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

This is a petition for a writ of certiorari to the Supreme Court of the State of New York, New York

County, to review a decision of the New York Court of Appeals dated May 28, 1940, affirming a final order of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department (fols. 178-183), which affirmed, without opinion, an order of Special Term of the Supreme Court, New York County (fols. 10-14), confirming the disallowance of the claim by a referee (fols. 142-162).

I.

Summary Statement of the Matter Involved.

Your petitioner is the Administrator *de bonis non* of the Estate of Wesley Cooper, who died March 21, 1919, a resident of Washington County, State of Mississippi (fols. 111 to 115).

On September 14, 1932, National Surety Company executed an administrator's bond, in the sum of $6,000, for an administrator of the goods, chattels, etc., of said Wesley Cooper, in favor of the State of Mississippi (fols. 106 to 110). The bond was executed and delivered in the State of Mississippi and was filed with the Chancery Court of that State on September 20, 1932 (fols. 106-108).

Prior to that date National Surety Company had complied with the laws of Mississippi governing the admission of foreign insurance corporations (fols. 61 and 62), had been duly licensed to engage in business in that State, and concededly had irrevocably appointed the Commissioner of Insurance of Mississippi its agent for the service of process, as required by Mississippi statutes (fol. 149).

On November 14, 1932, the administrator received from the United States Government the sum of

$5,847, the proceeds of a war risk insurance policy covering the life of decedent as a soldier of the United States in the World War (fols. 75-76).

On March 27, 1934, the administrator was directed by the Chancery Court to account (fol. 90). He disregarded the order and was removed on April 5, 1934 (fol. 90) by a decree which directed him to surrender all assets of the estate. This direction was likewise disregarded (fols. 90 and 91). During his tenure as administrator, and prior to July 24, 1933, the original administrator misappropriated or misapplied all assets of the estate, amounting to $5,847 (fols. 76-77, 99).

National Surety Company was dissolved on June 1, 1934, by order of the Supreme Court of the State of New York, New York County, which directed that all claims be filed by April 1, 1935 (fols. 116 to 140).

Sworn proofs of claim, based on the *devastavit* of the original administrator, were filed with the respondent, as Liquidator of National Surety Company (fols. 85 to 100).

In February, 1936, your petitioner, as administrator *de bonis non*, and Mimie Cooper, widow of Wesley Cooper, instituted suit on the bond in the Chancery Court, Washington County, Mississippi, against National Surety Company. The summons was served on the Commissioner of Insurance of Mississippi, whom National Surety Company, pursuant to the requirements of Section 5165 of the Mississippi Code, and as a condition of its being permitted to engage in business in that State, had irrevocably designated as its agent to receive process. On February 24, 1936 the Commissioner of Insurance delivered the summons to the respondent, as Liquidator of National Surety Company, in New York City (fol. 29).

National Surety Company defaulted in appearance and answer, and on March 12, 1936, judgment by default was entered against the Company in the sum of $6,709.52 (Claimant's Ex. 1, fols. 70 to 84).

Thereafter, the Liquidator disallowed the claim, and the matter was referred to a referee. At the hearing before the referee the following documents were received in evidence in support of the claim:

1. A judgment in the sum of $6,709.52 rendered by the Chancery Court of Mississippi, in favor of claimant and against National Surety Company, entered March 12, 1936 and duly authenticated in accordance with the Acts of Congress (Cl. Ex. 1, fols. 70 to 84).

2. Original sworn proof of claim filed February 18, 1935 (Cl. Ex. 2, fols. 85 to 94).

3. Amended sworn proof of claim filed October 3, 1935 (Cl. Ex. 3, fols. 95 to 100).

4. The bond in suit (Cl. Ex. 5, fols. 106 to 110).

5. Letters of administration issued to William F. Laughlin, the claimant herein (Cl. Ex. 6, fols. 111 to 115).

The referee confined his report solely to the validity of the Mississippi judgment. He concluded that the judgment was a nullity and recommended that the claim be disallowed. Special Term of the Supreme Court, without opinion, confirmed the report, and the Appellate Division unanimously affirmed, without opinion, the order of Special Term. On December 15, 1939, the Appellate Division denied

petitioner's motion for leave to appeal to the Court of Appeals. On January 12, 1940, the Court of Appeals granted leave to appeal.

The appeal was argued before the Court of Appeals on April 9, 1940, and, on May 28, 1940, said Court unanimously affirmed the order appealed from, with an opinion by Judge Finch which is reported in 283 N. Y. 68.

On August 12, 1940, Hon. Stanley Reed, Associate Justice of the Supreme Court of the United States, made an order extending to October 24, 1940, the time within which petitioner might apply to this Court for a Writ of Certiorari.

By order dated October 9, 1940, the Court of Appeals granted your petitioner's motion to recall and amend the Remittitur for the purpose of showing that questions under the Constitution of the United States had been presented and necessarily passed upon by the Court of Appeals in its determination of this case. On October 17, 1940, the Remittitur as amended was remitted to the Supreme Court, New York County, and is presently in the custody of said Court.

II.

Reasons Relied on for the Allowance of the Writ.

The New York Court of Appeals has decided federal questions of the utmost importance in holding:

1. That a valid *in personam* judgment cannot be obtained, after dissolution, against a foreign insurance corporation in a forum in which the contract was made and in which the liability thereunder accrued, although such corporation as a condition of its admittance has irrevocably

designated a statutory agent for the service of process, and although the laws of the State to which the corporation has been admitted expressly continue the existence of such corporation for a period of three years after dissolution for the purpose of suing and being sued.

2. That although the State of Mississippi has insured to its citizens the right to obtain, in its Courts, a valid judgment against a New York insurance corporation engaged in business in Mississippi and thereafter dissolved in New York, a judgment so obtained is void in New York and not entitled to full faith and credit under Article 4, Section 1 of the United States Constitution.

3. That the statutes enacted by the State of Mississippi for the protection of its citizens, imposing conditions on a New York corporation seeking admittance, may be emasculated and rendered nugatory by the simple expedient of an order of the New York Supreme Court in a dissolution proceeding.

4. That while citizens of Mississippi may be divested of the contractual rights acquired through contracts entered into in that State, such procedure does not impair the obligations of contract and does not violate Article 1, Section 10 of the United States Constitution.

5. That the irrevocable designation by National Surety Company of the Commissioner of Insurance of Mississippi as its statutory agent for service of process is "analogous to a power of attorney granted by an individual which ceases upon the death of that individual."

The decision of the New York Court of Appeals conflicts squarely with the decisions of the Supreme Court of the United States in the following cases:

Washington ex rel. Bond & Goodwin and Tucker v. *Superior Court*, 289 U. S. 361;
Clark v. *Williard*, 292 U. S. 112;
Neirbo Co. v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165;
Penn. Fire Ins. Co. v. *Gold Issue Mining Co.*, 243 U. S. 93.

The precise federal questions raised herein are of great significance to the public at large. The successive steps by which the several States have endeavored to formulate a uniform, workable plan, consistent with the safeguarding of the interests of their own citizens, under which foreign corporations may be admitted to engage in business, and to clarify the procedure with respect to insolvent insurance corporations, will definitely be impeded by this decision.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of New York, New York County, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case numbered and entitled on its docket No. 16491—1933, William F. Laughlin, as Administrator *de bonis non*, of the Estate of Wesley Cooper, Appellant, v. Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of National Surety Company, Respondent, to the end that this cause may

be reviewed and determined by this Court as provided for by the statutes of the United States; and that the order and judgment of said Court of Appeals be reversed by this Court, and for such other and further relief as to this Court may seem proper; and your petitioner will ever pray.

Dated, New York City, October 22, 1940.

WILLIAM F. LAUGHLIN,
as Administrator *de bonis non*
of the Estate of Wesley
Cooper, Deceased.
By OSCAR R. HOUSTON,
FRANCIS X. NESTOR,
Counsel for Petitioner.